BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	))	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

REPLY COMMENTS OF
NORTH COUNTY COMMUNICATIONS CORPORATION

Pursuant to the Commission's February 9, 2011 Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("NPRM"), North County Communications Corporation ("NCC") submits its reply comments regarding Section XV of the NPRM.

I. Definitive Guidance is Needed

The Commission should act carefully yet quickly to adopt new rules and clarify existing rules related to access stimulation, VoIP services, and CMRS access fee obligations. Without clear rules, IXCs, VoIP service providers, and CMRS providers will continue withholding call termination service payments owed to CLECs. If the Commission does not act quickly, CLECs will continue to suffer financially. Moreover, the Commission should assure state commissions that the Commission will accept the CMRS rates ordered by the state commissions.[1]

II. Access Stimulation Rules Need to be Clarified in a Timely Manner

As NCC has explained, it is unnecessary to create triggers related to call volumes or the establishment of revenue-sharing arrangements.[2] The Commission can resolve all concerns by requiring rural, rate-of-return ILECs to file tariffs containing tiered/step-down interstate switched access rates that decrease as traffic volumes increase.[3] Costs in rural areas can be up to ten times the cost to operate in major cities. Thus, it would be inappropriate to force CLECs to charge a lower RBOC rate while allowing the rural ILECs to charge a higher rate. The Commission should not take action that discourages CLECs from operating in rural areas – areas hit hard by the recent economic downturn. A step-down/tiered rate structure removes any incentive to engage in rate arbitrage and allows CLECs to operate in rural areas on even footing with competitors. Consumers and carriers (including the carriers sending traffic in those areas and consuming switched access services for the termination of such traffic) will be protected, and the

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[1] State commissions have conducted countless ratemaking proceedings for the ILECs over the years and have the expertise to consider the unique characteristics of the phone service landscape in their states, although some state commissions may refuse to act. *See*, *e.g.*, Application of NCC for Approval of Default Rate for Termination of Intrastate, IntraMTA Traffic Originated by CMRS Carriers, A.10-01-003, *Decision Dismissing Application without Prejudice Due to Pendency of Federal Proceedings*, CPUC Dec. No. 10-06-006 (June 3, 2010) (refusing to commit CPUC resources until the Commission agrees to use the rates adopted) (http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/119014.htm).

[2] *See* Comments of NCC at 2-4.

[3] In those rural areas, the same tiered/step-down approach should apply to CLECs. No additional rules would be required to regulate CLECs, and the Commission would not reverse 15 years of regulatory policy and competitive development by subjecting CLECs to burdensome cost-study analyses. CLECs are sufficiently regulated now by being subject to the Commission's benchmark rules that require CLECs to charge no more than the applicable ILEC's interstate switched access rate. The benchmark ensures CLECs charge reasonable switched access rates and conforms to the intent of the 1996 Act: creation of an even playing field.

CLECs in those areas will not be subjected to onerous cost-study practices that have never applied to CLECs.[4]

Whichever course the Commission elects, it should act quickly to eliminate the financial drain on carriers that are not receiving any compensation. At this time, many IXCs are attempting to force competitors out of business by refusing to pay anything – not even a single penny – for call termination if they suspect access stimulation.[5] While the IXCs lament the cost of access stimulation as outrageous, the numbers they highlight are suspect at best[6], and the amount of disputed termination charges is minuscule in comparison to the IXCs' corresponding revenues.[7] Commenters assert that switched access charges related to access stimulation total $400 million per year[8]; however, they fail to note that Verizon, AT&T and Sprint enjoyed combined 2010 revenues of $263.5 billion.[9] Assuming, *arguendo*, the access stimulation

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[4] *See* Comments of the Iowa Utilities Board at 17-18; *see also* Comments of COMPTEL at 7-9 (asking the Commission to clarify that a CLEC would be required to re-file access tariffs only if the CLEC ***both*** engages in access revenue sharing and charges a higher rate than allowed under benchmarking);

[5] Indeed, "access stimulation" is a nebulous term that the IXCs are inclined to define unilaterally in whatever manner suits their desires to avoid paying call termination charges, despite the fact that the IXCs make money from their end users for those calls. *See also* Comments of Pac-West Telecomm, Inc. at 17-19 (requesting the Commission adopt rules to address anticompetitive forms of self-help often employed by IXCs and similarly situated carriers).

[6] For example, the IXCs refer to the "cost" of access stimulation without revealing the fact that there is no cost because they simply refuse to pay the call termination charges. Moreover, the numbers most often cited have been compiled by TEOCO Corporation, which is a company likely to inflate numbers because it generates its customers and makes its money disputing access bills. NCC has information that shows the estimates of access stimulation billing have been greatly exaggerated and would file that information with the Commission under seal if so requested.

[7] *See* Comments of Core Communications at 5 (stating the "real problem in intercarrier compensation today is regulatory uncertainty, which breeds all manner of nonpayment and payment avoidance schemes").

[8] *See* Comments of Verizon and Verizon Wireless at 35.

[9] *See* Verizon revenue of $106.6B (http://newscenter.verizon.com/press-releases/verizon/2011/verizon-sees-revenue-and-eps.html); *see also* AT&T revenue of $124.3B (http://www.sec.gov/Archives/edgar/data/732717/000073271711000014/ex13.htm); *see also*

estimates are remotely accurate, the alleged access stimulation amount constitutes a mere ***0.15 percent*** of the total 2010 revenue of those carriers.

In addition, the IXCs cry poor and point to their all-you-can-eat long distance plans in an attempt to say they cannot afford to offer those plans and pay all termination charges incurred by their end users' calls. Clearly, those complaining IXCs did not consider access termination charges when they designed those plans. Or, perhaps more accurately, the finance and accounting departments of those IXCs knew very well that they would refuse to pay termination fees, thereby ensuring that their unlimited calling plans would be even bigger cash cows.

IXCs certainly did not abandon their low-cost, per-minute plans to offer all-you-can-eat calling plans because they would make less money providing unlimited calling services. In the accounting departments of the IXCs exist the studies that show the profitability of offering unlimited calling plans based on the fact that most callers will never make a number of calls or use a number of minutes that would render the all-you-can-eat plan a losing proposition. To be sure, the IXCs may lose money on some end users, but like a casino, the odds remain in the favor if the IXCs such that, in the long run, the plans make money for those carriers. By shunning their access charge obligations, these IXCs enjoy an even larger financial windfall with their unlimited calling plans.[10]

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http://www.sec.gov/Archives/edgar/data/101830/000010183011000005/sprint201010k.htm (Sprint revenue of $32.6B).

[10] As NCC has noted, the large carriers want to use their market power to push for rules that eliminate or otherwise stifle the offerings of smaller carriers that compete with the traditional strongholds of the IXCs and ILECs. *See* Comments of NCC at 2. Such abuses of market power have happened in the past. For instance, Verizon purposefully delayed NCC's entry into the Illinois telecommunications market. In October 2004, the Illinois Commerce Commission held that Verizon had engaged in anti-competitive, bad faith behavior in order to keep NCC, a competitor, from offering service to customers in the Illinois market. *See North County Communications Corp. v. Verizon North Inc. and Verizon South Inc.*, *Final Order*, I.C.C., Case No. 02-0147 (Oct. 6, 2004). It is clear that the large carriers will stop at nothing to protect what they believe to be their exclusive right to provision services to end users.

In its initial comments, Integra Telecom stated that NCC has "forced Integra to spend substantial amounts of time and money on defending itself" in cases where NCC has filed suit to collect on unpaid access charges.[11] Interestingly, the Integra matter demonstrates a case beyond the usual situation of a carrier's refusal to pay access charges for the calls placed by its end users. Integra refuses to pay NCC for the termination of calls from other carriers to whom Integra is providing wholesale transport services. Wholesale termination occurs where Integra carries (on its network) and transmits a third-party telecommunication carrier's traffic to NCC's network as an intermediary between the third-party carrier and NCC. NCC has an obligation to accept and terminate all such traffic. Integra, however, has no regulatory obligation to market wholesale termination services or to route such wholesale long distance traffic over its network and onto NCC's network on behalf of these third-party carriers. Integra refuses to compensate NCC for ***any*** traffic termination services provided by NCC to Integra, and thus, through its decision to provide wholesale termination, Integra further exploits its refusal to pay NCC by obtaining free call termination services for itself and third parties, while Integra reaps profits from the charges it imposes on those third-party carriers for termination of that traffic. In providing wholesale termination of calls to NCC's network without compensating NCC, Integra inserts itself between NCC and carriers that would be compensating NCC for such termination, allowing Integra itself to profit from such wholesale termination, with the associated cost of paying NCC. In addition, despite NCC's repeated requests, Integra refuses to stop transporting this wholesale traffic. Instead, because of the vast profits associated with sending NCC this wholesale traffic, Integra has actually increased ***tenfold*** the amount of traffic it sends to NCC since the lawsuit was filed. Such an unlawful scheme should be ended, and NCC has been compelled to seek redress in court.

[11] *See* Joint Comments of Cbeyond, Inc., Integra Telecom, Inc., and TW Telecom, Inc. at 17.

NCC also notes that the Commission should not intervene in intercompany operations. For example, revenue-sharing or commission-based structures should not be ruled unlawful. Many carriers, including the carriers complaining about so-called access stimulation, pay or receive commissions for telecommunications services. The Commission should not prohibit those arrangements. Instead, the Commission should impose regulations that keep access rates reasonable without dictating corporate contractual obligations or limitations.

III. VoIP Services Should Be Treated Like Traditional Telecommunications Services

NCC agrees with the vast majority of commenting parties who contend that VoIP service should be classified as a telecommunications service, not an information service.[12] VoIP is functionally equivalent to traditional telephone service, and thus, the providers of such services should be subject to all of the obligations that apply to traditional telecommunications service providers, including, without limitation, the obligation to pay intercarrier compensation for call termination.

Carriers that terminate calls from VoIP providers should be compensated for such switched access termination at the rates that govern typical POTS traffic. The Commission should not permit telecommunications providers to perform some IP conversion to avoid call termination charges. Indeed, the Commission should not create a new category of traffic subject to a $0.0007 per minute of use ("MOU") default rate, especially in light of the fact that a rate of $0.0007 would be a below-cost/below-TELRIC rate for voice traffic.[13] As NCC noted in its comments, voice traffic – even voice traffic transmitted using some level of IP conversion – does

[12] *See* Comments of the Iowa Utilities Board at 6-10; *see also* Comments of COMPTEL at 2-7; *see also* Comments of the California Public Utilities Commission and the People of the State of California at 2-5.

[13] *See* Comments of Core Communications at 14 (noting the "primary effect of [a VoIP termination rate of $0.0007/MOU] would be to provide the originating carriers a regulatory windfall, strip terminating carriers of a lawful and important revenue stream, and result in a regulatory takings").

not have the same attributes that led to the agreement to an ISP-bound rate of $0.0007/MOU.[14] Applying a termination rate of $0.0007 to VoIP service will only serve to create a new form of arbitrage as carriers will manipulate traffic to mischaracterize the jurisdiction in order to make it appear IP-related. This will result in even more phantom traffic.

NCC also notes that the Commission's recent VoIP-related *YMax* decision may have unintended, industry-wide ramifications.[15] In its decision, the Commission prohibited YMax from collecting switched access fees where it had no tariff relationship to end users.[16] The Commission, of course, has a duty to protect the public interest and to ensure that end users know they are subject to any applicable tariffs. The decision, however, could be read to prevent the imposition of access charges in all instances where a carrier provides services under contract or otherwise off tariff. Under that interpretation, many carriers could be required to pay refunds for access charges collected for a variety of services, including off-tariff, contract, free or discounted services. For example, a carrier like Verizon (or any ILEC or RBOC for that matter) could be required to issue refunds for access charges collected for calls to the carrier's: (i) time and weather service; (ii) dial-up ISP service; (iii) discounted calling plans for its corporate retirees; or (iv) myriad services provided to end users under contract.

A fine balance must be achieved. Excluding the collection of access charges on the above-noted services will hamper the delivery of important telecommunications services and the

[14] *See* Comments of NCC at 6-7. In addition, it should be recalled that $0.0007 was a compromise, below-TELRIC rate agreed to by the ILECs, who balked at paying anything to dial-up ISPs.

[15] *See AT&T Corp. v. YMax Communications Corp.*, File No. EB-10-MD-005, Memorandum Opinion and Order, FCC 11-59 (rel. April 8, 2011).

[16] *Id*.

development of new services. Thus, the Commission should act judiciously as it establishes new rules and to recognize the full ramifications of such rules.

IV. **CMRS Providers Should Pay Typical Switched Access Termination and Reciprocal Compensation Rates**

At least one commenter suggests the Commission should set a $0.0007 per MOU default rate for CMRS call termination, allowing carriers to negotiate a different rate.[17] Undoubtedly, with such an artificially low default rate, CMRS providers will have no incentives to negotiate. For example, after the Commission's *T-Mobile* order, which allowed ILECs – but not CLECs – to file wireless termination tariffs, CMRS providers have refused to pay and refused to negotiate agreements with CLECs. Certainly no CMRS provider will negotiate a rate that exceeds $0.0007/MOU. In effect, the Commission would establish a rate that falls far below the actual cost that CLECs incur to terminate calls from CMRS providers.

The Commission should avoid the temptation to create a new category of calls that terminate for the well-below-cost rate of $0.0007 per MOU. The Commission should maintain its previous position –set forth in *MetroPCS* – and allow intercarrier compensation rates for CMRS traffic to be set by the state commissions.[18] Furthermore, the Commission should create a deadline for the state commissions to establish those rates. Additional delays simply place an unnecessary financial burden on smaller companies – *i.e.*, the CLECs – as well-funded CMRS providers withhold payments and artificially price their calling plans below cost based on their

[17] *See* Comments of Verizon at 45.

[18] *North County Communications Corp. v. MetroPCS California, LLC,* Memorandum Opinion and Order, 24 FCC Rcd 3807 (Enf. Bur. 2009), *pet. for recon. granted in part and denied in part*, 24 FCC Rcd 14036 (2009), *pet. for rev. pending sub nom., MetroPCS California, LLC v. FCC,* No. 10-1003 (D.C. Cir. filed Jan. 11, 2010).

ability to avoid paying for call termination. It is unfair to burden the CLECs with the duty of subsidizing wireless calling plans.

Finally, NCC notes that a bill-and-keep or $0.0007 arrangement will result in traffic manipulation and arbitrage by some wireless carriers. Indeed, some unscrupulous wireless carriers – *e.g.*, Verizon Wireless – admittedly route interMTA traffic over local interconnection trunks in order to avoid paying access fees for terminating toll traffic. With an artificially low termination rate, wireless carriers will have more incentive to disguise and obfuscate the jurisdiction of their traffic.

V. CONCLUSION

The Commission should (1) create a step-down/tiered rate structure for areas served by rural, rate-of-return ILECs; (2) maintain the "benchmark" rule for CLECs; (3) avoid "bill-and-keep" arrangements and triggers that discriminate against smaller carriers; and (4) treat all voice calls the same.

Respectfully submitted,

_/s/R. Dale Dixon, Jr._________________

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